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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
YOUSSOUF TOURE, on behalf of himself and all other persons similarly situated,

Plaintiff,

-against-

KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK, PAX VENTURES, LLC and JOHN DOES #1-10,

Defendants.
---X

Case No.:

COMPLAINT AND JURY DEMAND

Plaintiff YOUSSOUF TOURE, by and through his undersigned attorney, for his complaint against Defendants KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK, PAX VENTURES, LLC and JOHN DOES #1-10, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff YOUSSOUF TOURE alleges on behalf of himself and on behalf of other similarly situated current and former employees of Defendants KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK, PAX VENTURES, LLC and JOHN DOES #1-10, who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 90 U.S.C. § 216(b), that they are entitled to (i) unpaid wages from Defendants, and (ii) liquidated damages

pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, because defendants violations were willful.

2. Plaintiff YOUSSOUF TOURE further complains on behalf of himself and on behalf of a class of other similarly situated current and former employees of defendant, pursuant to Fed.R.Civ.P. 23, that he is entitled to (i) compensation for defendants' failure to pay for all hours worked; (ii) liquidated damages pursuant to New York Labor Law for these violations, and (iii) statutory damages for violations of the Wage Theft Prevention Act.

THE PARTIES

3. Plaintiff YOUSSOUF TOURE is an adult individual residing in Bronx, New York.

4. Plaintiff YOUSSOUF TOURE consents in writing to be a party to this action pursuant to 29 U.S.C. § 216(b); Plaintiff YOUSSOUF TOURE's written consent is attached hereto and incorporated by reference.

4. Upon information and belief, defendant KOSTAS KARAGIANNIS is an individual doing business as SANDWICHERIE OF NEW YORK, with a principal place of business at 202 East 42nd Street, New York, New York.

5. At all relevant times, defendant KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK has been, and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

6. Upon information and belief, at all relevant times, KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK had a gross revenue in excess of $500,000.00.

7. Upon information and belief, at all relevant times herein, KOSTAS

KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK, have used goods and materials produced in interstate commerce and have employed at least two individuals who handled such goods and materials on a regular basis.

8. Upon information and belief, at all times relevant herein, defendant KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK have constituted an "enterprise" as defined in the FLSA.

9. Upon information and belief, defendant KOSTAS KARAGIANNIS is an owner or part owner and principal of SANDWICHERIE OF NEW YORK, who has the power to hire and fire employees, set wages and schedules, and retain their records.

10. Upon information and belief, defendant PAX VENTURES, LLC, is a limited liability company formed in the State of New York, with a principal place of business at 1776 Broadway - 15th Floor, New York, New York 10019

11. At all relevant times, defendant PAX VENTURES, LLC has been, and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

12. Upon information and belief, at all relevant times, PAX VENTURES, LLC had a gross revenue in excess of $500,000.00.

13. Upon information and belief, at all relevant times herein, PAX VENTURES, LLC, have used goods and materials produced in interstate commerce and have employed at least two individuals who handled such goods and materials on a regular basis.

14 Upon information and belief, at all times relevant herein, defendant PAX VENTURES, LLC have constituted an "enterprise" as defined in the FLSA.

15. Upon information and belief, defendant PAX VENTURES, LLC previously owned a restaurant known as PAX Wholesome Foods located at 202 East 42nd Street, New York, New York.

16. Defendant KOSTAS KARAGIANNIS is involved in the day-to-day operations of SANDWICHERIE OF NEW YORK and plays an active role in managing the business.

17. Defendant KOSTAS KARAGIANNIS was the Chief Operating Officer of Defendant PAX VENTURES, LLC, and involved in the day-to-day operations of the PAX WHOLESOME FOODS store located at 202 East 42nd Street, New York, New York and played an active role in managing the business.

18. Upon information and belief, defendants JOHN DOES #1-10 represent the other owners, officers, directors, and/or managing agents of the Defendants KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK and PAX VENTURES, LLC, whose identities are unknown at this time, who participated in the day-to-day operations of defendants, who have the power to hire and fire employees, set wages and schedules, and retain their records, and who constitute "employers" pursuant to the FLSA, New York Labor Law, and federal and state implementing regulations.

19. Defendant KOSTAS KARAGIANNIS constituted an "employer" of plaintiff as that term is used in the Fair Labor Standards Act and New York Labor Law.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiff YOUSSOUF TOURE's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff

YOUSSOUF TOURE's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

21. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant's business is located in this district.

COLLECTIVE ACTION AND CLASS ACTION ALLEGATIONS

22. Pursuant to 29 U.S.C. § 207, Plaintiff YOUSSOUF TOURE's seeks to prosecute his FLSA claims as a collective action on behalf of all persons who are or were formerly employed by Defendants in the United States at any time since May 5, 2014, to the entry of judgment in this case (the "Collective Action Period"), who were employed as food service workers within the meaning of the FLSA, and who were not paid minimum wage nor overtime compensation at rates not less that one-and-one-half times the regular rate of pay for hours worked in excess of forty hours per workweek (the "Collective Action Members").

23. Pursuant to Fed.R.Civ.P. 23(a), (b)(2), and (b)(3), Plaintiff YOUSSOUF TOURE seeks to prosecute his New York Labor Law claims on behalf of all persons who were employed by defendant in the State of New York as food service workers at any time within the applicable statute of limitations period (from May 5, 2011 to the entry of judgment in this case (the "Class Period"), who have not been paid their full wages in violation of the applicable provisions of New York wage and hours laws (the "Class").

24. Prosecution of this matter as a class is necessary because the persons in the putative Class identified above are so numerous that joinder of all members is impracticable.

25. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of defendant, because there are more than 40 members of the putative class during the Class Period, most of who would not

be likely to file individual suits because they lack adequate financial resources, access to attorneys, or knowledge of their claims.

26. Plaintiff YOUSSOUF TOURE will fairly and adequately protect the interests of both the putative Class Members and the Collective Action Members and has retained counsel that is experienced and competent in the fields of employment law and class action litigation.

27. Plaintiff YOUSSOUF TOURE's claims are typical of the claims of the putative Class and Collective Action Members, and Plaintiff YOUSSOUF TOURE has no interest that is contrary to, or in conflict with, the putative members of this class action or collective action.

28. Furthermore, inasmuch as the damages suffered by individual putative Class Members and Collective Action Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the putative class and collection actions to individually seek redress for the wrongs done to them.

29. Questions of law and fact common to the members of the putative class and collective actions predominate over questions that may affect only individual members because defendant's have acted on grounds generally applicable to all members.

30. Among the common questions of law and fact under the FLSA and New York wage and hour laws common to Plaintiff YOUSSOUF TOURE and other putative Class/Collective Action Members are the following:

a. Whether Defendants failed and/or refused to pay the Collective Action Members pay for hours worked, in violation of the FLSA and the regulations promulgated thereunder;

b. Whether the Defendants failed and/or refused to pay the putative Class

Members for hours worked, in violation of the New York wage and hour laws and the regulations promulgated thereunder;

c. Whether Defendants failed and/or refused to provide the putative Class Members with the annual and weekly pay notices required by New York Labor Law 195.1 and the Wage Theft Prevention Act;

d. Whether Defendants failed to keep true and accurate time records for all hours worked by YOUSSOUF TOURE and the putative Class or Collective Action Members;

e. Whether Defendants violations of the FLSA are willful as that therm is used within the FLSA; and

f. Whether Defendant's violations of New York Labor Law are willful as that term is used within the context of New York Labor Law.

31. Plaintiff YOUSSOUF TOURE knows of no difficulty that will be encountered in the management if this litigation that will preclude its maintenance as a collective action or class action.

FACTS

32. From approximately 2003 through February of 2017, Defendants PAX VENTURES, LLC and KOSTAS KARAGIANNIS operated a retail dining establishment located at 202 East 42nd Street, New York, New York, commonly known as PAX WHOLESOME FOODS.

33. In or about February of 2017, Defendant KOSTAS KARAGIANNIS began to operate a retail dining establishment located at 202 East 42nd Street, New York, New York,

commonly known as SANDWICHERIE OF NEW YORK.

34. From approximately 2003 through April 19, 2017, plaintiff YOUSSOUF TOURE was employed by Defendants to do various jobs including working the counter, food preparation, cooking and cleaning.

35. Plaintiff YOUSSOUF TOURE's work was performed in the normal Course of defendants' business and was integrated into the business of defendants, and did not involve executive or administrative responsibilities.

36. At all relevant times herein, plaintiff YOUSSOUF TOURE was an employee engaged in commerce and/ or in the production of goods for commerce, as defined in the FLSA and its implementing regulations.

37. During the course of plaintiff YOUSSOUF TOURE's employment with defendants, he routinely worked six to seven days per week.

38. From May 5, 2011 through April 19, 2017, plaintiff YOUSSOUF TOURE worked 11 hours per day, Mondays through Thursday, 6 a.m. to 5 p.m.

39. On occasion, plaintiff YOUSSOUF TOURE worked 11 hours on Fridays, 6 a.m. to 5 p.m.

40. From May 5, 2011 through April 19, 2017, plaintiff YOUSSOUF TOURE worked 9 hours per day on Saturdays, 3 p.m. to 12 a.m.

41. From May 5, 2011 through April 19, 2017, plaintiff YOUSSOUF TOURE worked 16 hours per day on Sundays, 8 a.m. to 12 a.m.

42. As a result, plaintiff YOUSSOUF TOURE worked (69) hours per week from May 5, 2011 through April 19, 2017.

43. From May 5, 2011 through April 19, 2017, defendants paid plaintiff YOUSSOUF TOURE a flat $350.00 per week.

44. That the wages paid to the plaintiff by defendants were below minimum wage.

45. Defendants willfully failed to pay plaintiff YOUSSOUF TOURE the overtime "bonus" for hours worked beyond 40 hours in a workweek, in violation of the FLSA, the New York Labor Law, and the supporting New York State Department of Labor regulations.

46. Plaintiff YOUSSOUF TOURE routinely worked in excess of ten hours per day, yet defendants willfully failed to pay him one additional hour's pay at the minimum wage for each day he worked more than ten hours in violation of the New York Labor Law and the supporting New York State Department of Labor regulations.

47. Defendants failed to provide Plaintiff YOUSSOUF TOURE with a written notice of his regular rate of payor overtime rate of pay, in violation of New York Labor Law § 195.1 and the Wage Theft Prevention Act.

48. Plaintiff YOUSSOUF TOURE was paid in cash, and defendants failed to provide Plaintiff YOUSSOUF TOURE with a record of his compensation or his hours worked, in violation of the Wage Theft Prevention Act.

49. Upon information and belief, while defendants employed Plaintiff YOUSSOUF TOURE and throughout all relevant time periods, defendants failed to maintain accurate sufficient time records.

50. Upon information and belief, while Defendants employed Plaintiff YOUSSOUF TOURE and through all relevant time periods, defendants failed to post or keep posted a notice explaining the overtime pay rights provided by the FLSA or New York Labor Law.

51. At all times relevant hereto, Plaintiff YOUSSOUF TOURE was an exemplary employee and always received compliments for his work performance.

COUNT I

(Fair Labor Standards Act - Minimum Wage)

52. Plaintiff YOUSSOUF TOURE, on behalf of himself and all Collective Action Members, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

53. At all relevant times, defendants had a policy and practice of refusing to pay minimum wage to their employees for hours they worked.

54. At all relevant times, Defendant employed Plaintiff YOUSSOUF TOURE within the meaning of the FLSA.

55. Defendant failed to pay wages equal to or greater than the minimum wage to Plaintiff YOUSSOUF TOURE and the Collective Action Members for all hours worked.

56. As a result of Defendant's willful failure to compensate Plaintiff YOUSSOUF TOURE and the Collective Action Members at a rate at least equal to the federal minimum wage for each hour worked, Defendant has violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 206.

57. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

58. Due to Defendant's FLSA violations, Plaintiff YOUSSOUF TOURE is entitled to recover and the Collective Action Members are entitled to recover from Defendants their unpaid compensation plus liquidated damages, reasonable attorneys fees, and costs and disbursements of

this action, pursuant to 29 U.S.C. § 216(b).

COUNT II

(New York Labor Law - Minimum Wage)

59. Plaintiff YOUSSOUF TOURE, on behalf of himself and the members of the Class, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

60. At all relevant times, defendants had a policy and practice of refusing to pay minimum wage to their employees for hours they worked.

61. At all relevant times, Plaintiff YOUSSOUF TOURE was employed by the defendant within the meaning of New York Labor Law, §§ 2 and 651.

62. Defendant willfully violated Plaintiff YOUSSOUF TOURE's rights and the rights of the members of the class by failing to pay them an amount equal to the minimum wage in violation of New York Labor Law §§ 190-199, 652 and their regulations.

63. Due to defendant's New York Labor Law violations, Plaintiff YOUSSOUF TOURE's and the members of the class are entitled to recover from defendant their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

COUNT III

(Fair Labor Standards Act - Overtime)

64. Plaintiff YOUSSOUF TOURE, on behalf of himself and the members of the Class, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

65. At all relevant times, defendants employed Plaintiff YOUSSOUF TOURE within the meaning of the FLSA.

66. At all relevant times, defendants had a policy and practice of refusing to pay overtime compensation to their employees for hours they worked in excess of forty hours per workweek.

67. As a result of defendants' willful failure to compensate Plaintiff YOUSSOUF TOURE and the members of the class, at a rate not less than one-and-one-half times the regular rate of pay for work performed in excess of forty hours per workweek, defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 et *seq.,* including 29 U.S.C. §§ 207(a) (1) and 215(a).

68. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

69. Due to defendants' FLSA violations, Plaintiff YOUSSOUF TOURE and the members of the class are entitled to recover from defendants their unpaid overtime compensation, an additional equal amount as liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT IV

(New York Labor Law - Overtime)

70. Plaintiff YOUSSOUF TOURE, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

71. At all relevant times, Plaintiff YOUSSOUF TOURE and the members of the class were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

72. Defendants willfully violated Plaintiff YOUSSOUF TOURE's and the members of the class' rights by failing to pay them overtime compensation at rates not less than one-and-one-half times the regular rate of pay for each hour worked in excess of forty hours per workweek in violation of the New York Labor Law §§ 650 et *seq.* and its supporting regulations in 12 N.Y.C.R.R § 137.

73. Defendants failure to pay overtime was willful within the meaning of New York Labor Law § 663 and supporting regulations.

74. Due to defendants New York Law or Law violations, Plaintiff YOUSSOUF TOURE and the class are entitled to recover from defendants their unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

COUNT V

(New York Labor Law - Spread of Hours)

75. Plaintiff YOUSSOUF TOURE, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

76. At all relevant times, Plaintiff YOUSSOUF TOURE and the members of the class were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

78. Defendants willfully violated Plaintiff YOUSSOUF TOURE and the members of the class' rights by failing to pay him an additional hour's pay at the minimum wage for each day's shift in excess of ten hours worked, in violation of the New York Labor Law §§ 650 et *seq.* and its regulations in 12 N.Y.C.R.R § 137-1.7.

79. Defendants' failure to pay the "spread of hours" premium was willful within the

meaning of New York Labor Law § 663 and supporting regulations.

80. Due to defendants' New York Labor Law violations, Plaintiff YOUSSOUF TOURE and the members of the class are entitled to recover from defendants their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663 (1).

COUNT IV

(New York Labor Law - Failure to Pay Wages)

81. Plaintiff YOUSSOUF TOURE repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

82. At all relevant times, Plaintiff YOUSSOUF TOURE was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

83. Defendants willfully violated Plaintiff YOUSSOUF TOURE and the members of the class' rights, and the rights of the members of the class, by failing to pay them wages owed for all hours worked, in violation of New York Labor Law § 191 and its implementing regulations.

84. Defendants' failure to pay wages was willful within the meaning of New York Labor Law § 198 and supporting regulations.

85. Due to defendants' New York Labor Law violations, Plaintiff YOUSSOUF TOURE and the members of the class are entitled to recover from defendants their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

JURY DEMAND

86. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff YOUSSOUF TOURE respectfully requests that this Court grant the following relief:

a. Certification of this action as a class action pursuant to Fed.R.Civ.P 23(b)(2) and (3) on behalf of members of the Class and appointing plaintiff and his counsel to represent the Class;

b. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and appointing plaintiff and his counsel to represent the Collective Action members;

c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

d. An injunction against defendants officers, agents, successors, and their employees, representatives, and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

e. A compensatory award of unpaid compensation, at the statutory overtime rate, due under the FLSA and the New York Labor Law;

f. An award of liquidated damages as a result of defendants' willful failure to pay the statutory overtime compensation pursuant to 29 U.S.C. § 216;

g. An award of damages as a result of defendants' willful failure to pay the spread of hours premium payment pursuant to New York Labor Law;

h. A compensatory award for unpaid wages;

i. Liquidated damages for defendants' New York Labor Law violations;

j. Statutory damages for defendants' violation of the New York Wage Theft Prevention Act;

k. Back pay;

l. Punitive damages;

m. An award of prejudgment and post judgment interest;

n. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and

o. Such other, further, and different relief as this Court deems just and proper.

Dated: Brooklyn, New York
May 5, 2017

ALEXANDER M. DUDELSON, ESQ. (AD4809)
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CONSENT TO SUE

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of KOSTAS KARAGIANNIS D/B/A SANDWICHERIE OF NEW YORK, PAX VENTURES, LLC and JOHN DOES #1-10, and their owners and affiliates to pay me, *inter alia*, overtime wages as required under the state and/or federal law and also authorize the filing of this consent in the action(s) challenging such conduct and consent to being named as the representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning this action. I have been provided with a copy of a retainer agreement with the law firm of Alexander M. Dudelson, Esq., and I agree to be bound by its terms.

Youssouf Touré

YOUSSOUF TOURE